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*First Note on Banning of Unregulated  
Deposit Schemes Ordinance, 2019*

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### Introduction:

The Banning of Unregulated Deposit Schemes Ordinance, 2019 (for brevity 'Ordinance') was promulgated by Honourable President of India on 21<sup>st</sup> Feb 2019.

The main objective of the Ordinance is to provide for a comprehensive mechanism to ban the unregulated deposit schemes and to protect the interest of depositors and for matters connected and incidental thereto.

The Banning of Unregulated Deposit Schemes Bill, 2019 was passed on 13<sup>th</sup> Feb 2019 in Lok Sabha and since the bill could not be taken up for consideration and passing in the Rajya Sabha, the President has promulgated the Ordinance in light of powers vested in him vide Article 123 of Constitution.

### Journey:

#### **Report of Standing Committee on Finance:**

The Standing Committee on Finance (SCF) presented its 21<sup>st</sup> Report on the subject of 'Efficacy of Regulation of Collective Investment Schemes, Chit Funds etc' to the Lok Sabha.

The Standing Committee after meeting and considering the views of representatives of Ministry of Finance (Department of Financial Services), Ministry of Corporate Affairs, Reserve Bank of India and SEBI has submitted the above report to Lok Sabha with their recommendations.

The SCF after various consultations with various officials have identified that there is either a regulatory overlap or vacuum in regulatory control, which is leading to the exploitation of hard-earned money from poor public. The key recommendations made by SCF is to strengthen the regulatory framework for unauthorised deposit taking activities.

#### **Inter-ministerial Group:**

Post the SCF report, the Government of India has constituted an Inter-Ministerial Group (IMG) for identifying the gaps in the existing regulatory framework for deposit-taking activities and to suggest administrative/legal measures, including **formulation of new law, to cover all aspects of deposit taking.**

IMG has finalised its Report and has recommended a number of legislative and non-legislative measures, **including legislation of a comprehensive central law called 'Banning of Unregulated Deposit Schemes and Protection of Depositors Interests Bill.**

#### **Reference to Standing Committee on Finance:**

Post making the report of IMG for public for comments, the Banning of Unregulated Deposits Schemes Bill, 2018 has been introduced in Lok Sabha on 18<sup>th</sup> July 18 and the same was referred to the SCF on 10<sup>th</sup> August 18 for examination and report.

The SCF after consultation with various representatives of Ministry of Finance (Department of Financial Services), Ministry of Corporate Affairs, Reserve Bank of India and SEBI has submitted its report to Lok Sabha.

**Introduced in Lok Sabha:**

Post such report, with the changes and recommendations of SCF, the bill has been reintroduced in the Lok Sabha and has been passed.

**Ordinance:**

As stated earlier, since the Rajya Sabha was not seated, the Bill has been promulgated as Ordinance by the Honourable President.

**Need for Ordinance:**

The various reports of SCF and IMG reveal that there is huge regulatory overlap or vacuum in the areas of deposit taking. Because of the above reasons, poor people being exploited of their hard-earned money.

**Current regulatory framework is tabulated as under<sup>1</sup>:**

S No	Activity	Concerned Regulator/Authority
1	Deposits by NBFC	RBI
2	Nidhi or mutual benefit society	RBI & MCA
3	Gold Saving Schemes launched by Jewellers	RBI & MCA
4	Deposits accepted by Companies under Section 73	MCA
5	Schemes Offered by Co-operative Societies	State Governments
6	Chit Funds	State Governments
7	Multi-Level Marketing/Pyramid Marketing Schemes	State Governments
8	Prize Chit and Money Circulation Banning Act	State Governments
9	Contract Insurance	IRDA
10	Pension Scheme or Insurance Scheme framed under EPF	IRDA or PFRDA
11	Unit Linked Insurance Plan	IRDA
12	New Pension Scheme	PFRDA
13	Housing Finance Institutions	National Housing Bank

**Certain Challenges under the current regulatory framework:**

**NBFCs:**

RBI governs only non-banking financial companies (NBFCs). NBFC is a company registered under Companies Act, which carries on any business of a financial institution or carries on the business of receiving deposits as its principal business.

RBI regulate only NBFCs whose principal business is finance. The principal business is held to be finance if the NBFC meets two criteria. First, the financial assets have to more than 50% of

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<sup>1</sup> Extract from 21<sup>st</sup> SCF Report

its total assets and second, the NBFC's income from financial assets has to more than 50% of its total income.

If the 50:50 criteria are met by NBFC, then its falls under the regulatory supervision of RBI, if not then such NBFC falls under the regulatory supervision of MCA. Further, there are many types of NBFCs that are regulated by other financial sector regulators such as IRDA, NHB, SEBI and State Governments.

Hence, from the above, it is evident that if NBFC meets the 50:50 criteria, then it will be regulated by RBI, if not by other concerned regulatory authorities. Hence, there is no single regulator for NBFCs which leads to multiple problems. The people who contribute to deposit could not understand the appropriate regulator in case of any failure of the NBFC to repay the deposit.

Further, as a matter of public policy, RBI has decided that only banks should be allowed to accept public deposits and as such, since 1997, RBI has not issued any registration certificate for NBFC authorising acceptance of public deposits. As of March 2018, out of 11,402 NBFCs registered with RBI, only 156 were deposit taking.

#### **Chit Funds:**

The operation of chit funds is governed by Central Legislation in India. The central law is a model legislation which is adopted and administered by State Governments. Chit Funds are regulated entities, classified as Miscellaneous Non-Banking Financial Institutions under the RBI Act.

Hence, Chit Funds are also regulated by RBI and State Governments. There cannot be a chit in a state unless it is registered with such State Government as per Chit Funds Act, 1982. RBI exempts any amounts received by way of subscription in respect of a 'chit' are excluded from the definition of 'deposit' under the RBI Act. Further, RBI has granted exemption to Chit funds from the provisions of mandatory registration, maintenance of liquid assets in approved securities and reserve fund.

While RBI is empowered to issue any directions to Chit fund companies, in order to avoid regulatory overlap, it does not issue any directions to such companies. However, since the banning of chit funds from accepting deposits does not come into conflict with Chit Funds Act, RBI has prohibited chit fund companies from accepting deposits.

The problem arises with Prize Chits. The Prize Chits are prohibited by the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 which is a central act. The said act is administered by Ministry of Finance and enforcement action is with State Governments in consultation with RBI.

Many of the cases fall under the Prize Chits and Money Circulation Scheme (Banning) Act. However, because of the dormant role played by Ministry of Finance in order to plug the loop holes in the said Act, off late there are glaring violations under the said Act.

**Collective Investment Scheme (CIS):**

CIS are regulated by SEBI. Section 11AA of SEBI Act defines the CIS to include such schemes which are mentioned in sub-section (2) and (2A). Further, the sub-section (3) excludes certain schemes as CIS. Further, the proviso to sub-section 11AA deems any investment which is not registered with SEBI and not exempted under sub-section (3) and having corpus more than 100 Crore rupees, as CIS.

The problem with CIS is every time SEBI makes an attempt to charge deposit taker under CIS scheme, Section 11AA is being challenged as ultra vires. Despite of the fact that SEBI has obtained a favourable order from Supreme Court, the said section is consistently challenged, and the High Courts are granting injunctions or stay on the orders passed by SEBI delaying the process of adjudication.

In light of all the above, it is proposed a bill to be introduced which will regulate the illicit deposit taking schemes and to protect interests of depositors of both regulated and unregulated deposit schemes.

**Salient Features:**

- The ordinance contains a substantive banning clause which bans deposit takers from promoting, operating, issuing advertisements or accepting deposits in any unregulated deposit scheme.
- The principle is that ordinance would ban unregulated deposit taking activities altogether, by making them an offence at the inception, rather than existing legislative – cum – regulatory framework which only comes effect ex-post with considerable time lags.
- The ordinance creates three different types of offences, namely, running of Unregulated Deposit Schemes, fraudulent default in Regulated Deposit Schemes, and wrongful inducement in relation to Unregulated Deposit Schemes.
- The ordinance adequate provisions for disgorgement or repayment of deposits in cases where such schemes nonetheless manage to raise deposits illegally.
- The ordinance provides for attachment of properties/ assets by the Competent Authority, and subsequent realization of assets for repayment to depositors.
- Clear-cut time lines have been provided for attachment of property and restitution to depositors.
- The ordinance enables creation of an online central database, for collecting and sharing of information on deposit taking activities in the country.

- Being a comprehensive Union law, the Bill adopts best practices from State laws, while entrusting the primary responsibility of implementing the provisions of the legislation to the State Governments.

### Meaning of Deposit:

The phrase 'deposit' has been defined vide Section 2(4) of Ordinance.

#### **'Deposit' means**

##### **any amount of money received**

- By way of an advance or
- By way of a loan or
- In any Other form

##### **By a deposit taker with**

- with a promise to return whether after a specified period or otherwise,
- either in cash or kind or in the form of a specified service
- with or without any benefit
- in the form of interest, bonus, profit, or in any other form

##### **but does not include:**

- amounts received as loan from a schedule bank/co-operative bank/any other bank
- amount received as loan from PFI/NBFCs/RFIs/Insurance Companies
- amounts received from appropriate governments (Govt)
- amount received from any other source where repayment is guaranteed by Govt
- amount received from a statutory authority constituted under any Act
- amount received from foreign govt/foreign or international banks/MFIs/foreign govt owned development financial institutions/foreign export credit collaborators, foreign bodies corporate/foreign citizens/foreign authorities or person resident outside India subject to FEMA regulations
- amount received by way of contributions towards the capital by partners of any partnership firm or LLP
- amount received by an individual by way of loan from his relatives or amounts received by any firm by way of loan from relatives of any of its partners
- amounts received as credit by a buyer from a seller on the sale of any property (whether movable or immovable)
- amount received by ARC
- any deposit made under Section 34 or an amount accepted by political party under Section 29B of Representation of People Act, 1951
- any periodic payments made by members of the SHG operating within the ceiling limits as prescribed by State/UT
- any other amounts collected for such purpose and within such ceiling as may be prescribed by State

- amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including –
  - payment, advance or part payment for supply or hire of goods or provisions of services and is repayable in the event the goods or services are not in fact sold, hired or otherwise provided
  - advance received in connection with consideration of immovable property under an agreement or arrangement subject to such condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement
  - security or dealership deposited for the performance of contract for supply of goods or provision of services
  - an advance under the long-term projects for supply of capital goods except immovable property transactions.

**Provided that if the amounts received above becomes refundable, such amounts shall be deemed to be deposits on the expiry of 15 days from the date on which they become due for refund**

**Provided further that where the said amounts become refundable, due to the deposit taker not obtaining necessary permission or approval under the law for time being in force, wherever required, to deal in goods or properties or services for which money is taken, such amounts shall be deemed to be deposits.**

### Meaning of Deposit Taker:

The phrase 'deposit taker' has been defined vide Section 2(6) of Ordinance.

#### **'Deposit taker' means:**

- any individual or group of individuals
- a proprietorship concern
- a partnership firm (whether registered or not)
- a LLP
- a company
- an AOP
- a trust (private or public trust, whether registered or not)
- a co-operative society or multi-state co-operative society
- any other arrangement of whatsoever nature

#### **receiving or soliciting deposits,**

#### **but does not include:**

- corporation incorporated under an Act of Parliament or State Legislature

- banking company/corresponding new bank/SBI/subsidiary bank/RRB/co-operative bank/multi-state co-operative bank.

**Meaning of ‘Regulated Deposit Scheme:**

The phrase ‘regulated deposit scheme’ has been defined vide Section 2(14) of Ordinance.

**‘regulated deposit scheme’ means:**

- the scheme specified under column (3) of First Schedule.

**Meaning of ‘Unregulated Deposit Scheme:**

The phrase ‘unregulated deposit scheme’ has been defined vide Section 2(17) of Ordinance.

**‘unregulated deposit scheme’ means:**

- a scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified column (3) of First Schedule.

**Regulated Deposit Schemes – First Schedule:**

S No	Regulator	RDS
1	SEBI	<ul style="list-style-type: none"> <li>• Collective Investment Scheme</li> <li>• Alternative Investment Funds</li> <li>• Funds managed by Portfolio Managers</li> <li>• Share Based Employee Benefits</li> <li>• Any other scheme registered under SEBI</li> <li>• Amounts received by Mutual Funds</li> </ul>
2	RBI	<ul style="list-style-type: none"> <li>• Deposits accepted by NBFC</li> <li>• Any other scheme registered/regulated with RBI</li> <li>• Amounts received by BCs and Facilitators</li> <li>• Amounts received by Authorised Payment System</li> </ul>
3	IRDA	<ul style="list-style-type: none"> <li>• Contract of Insurance</li> </ul>
4	State /UT	<ul style="list-style-type: none"> <li>• Scheme by Co-operative Society</li> <li>• Chit Business</li> <li>• Scheme regulated by enactment relating to money lending</li> <li>• Any scheme of prize chit or money circulation</li> </ul>
5	NHB	<ul style="list-style-type: none"> <li>• Scheme for accepting deposits under NHB Act, 1987</li> </ul>
6	PFRDA	<ul style="list-style-type: none"> <li>• Scheme under PFRDA</li> </ul>
7	EPFO	<ul style="list-style-type: none"> <li>• Scheme under EPFMP Act, 1952</li> </ul>
8	Central Registrar	<ul style="list-style-type: none"> <li>• Scheme from accepting deposits from voting members</li> </ul>
9	MCA	<ul style="list-style-type: none"> <li>• Deposits under Chapter V</li> <li>• Nidhi or Mutual Benefit Society under Section 406 of CA, 13</li> </ul>
10	Any Regulatory Body	<ul style="list-style-type: none"> <li>• Deposits accepted under any scheme registered with regulatory body</li> </ul>
11	Central Government	<ul style="list-style-type: none"> <li>• Any other scheme as notified by CG</li> </ul>

*Banning of Unregulated Deposit Schemes:*

**Section 3:**

On and from date of commencement of this Ordinance:

- The unregulated deposit scheme shall be banned and
- No deposit taker shall, directly or indirectly, promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits in pursuance of an unregulated deposit scheme.

**Punishment for Contravention of Section 3 – Section 21:**

S No	Default – Contravention of Sec 3	Imprisonment	Penalty
1	solicitation of deposits	1 year to 5 years	Rs 2 lakhs to Rs 10 lakhs
2	Accepts deposits	2 years to 7 years	Rs 3 lakhs to Rs 10 lakhs
3	Accepts & Fraudulently defaults in repayment or in rendering of any specified service	3 years to 10 years	Rs 5 lakhs to twice amount of aggregate funds collected

*Fraudulent Default in RDS:*

**Section 4:**

No deposit taker, while accepting deposits pursuant to a RDS, shall commit any fraudulent default in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit.

**Punishment for Contravention of Section 4 – Section 22:**

shall be punishable with imprisonment for a term which may extend to 7 years or with fine which shall not be less than Rs 5 lakhs but may extend to Rs 25 Crores or 3 times the amount of profits made out of the fraudulent default, whichever is higher, or with both.

*Wrongful Inducement in relation to URDS:*

**Section 5:**

No person shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to induce another person to invest in, or become a member or participant in any URDS.

**Punishment for Contravention of Section 5 – Section 23:**

shall be punishable with imprisonment for a term which shall not be less than 1 year but which may extend to five years and with fine which may extend to Rs 10 lakhs.

*Role of Competent Authorities:*

**Section 7:**

Where Competent Authority (as notified by Appropriate Govt) has reason to believe, on the basis of information and particulars as may be prescribed **that any depositor is soliciting deposits in contravention of Section 3, he may, by order in writing, provisionally attach the deposits held by deposit taker and the money or other property acquired either in the name of the deposit taker or in the name of any other person on behalf of the deposit taker from the date of order, in such manner as may be prescribed.**

*Role of Designated Courts:*

**Section 8:**

Appropriate Govt shall with concurrence of Chief Justice of High Court concerned, constitute one or more courts known as Designated Courts. No court other than Designated Court shall have jurisdiction in respect of any matter to which the Ordinance apply.

*Intimation of Business by Deposit Taker:*

**Section 10:**

Every deposit taker which commences or carries on its business as such shall intimate the authority referred in Section 9 about its business in such form and manner as may be prescribed.

*Priority of Depositors Claim:*

**Section 12:**

Save as otherwise provided in SARFESI or IBC, any amount due to depositors from a deposit taker **shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to government or local authority.**

*Precedence of Attachment:*

**Section 13:**

Save as otherwise provided in SARFESI or IBC, an order of provisional attachment shall have precedence and priority, **to the extent of claims of depositors over any other attachment by any authority competent to attach property for repayment of debts, revenues, taxes, cesses and other rates payable to government or local authority.**

Procedure:

- As stated earlier, the competent authority, if they have reasons to believe that any deposit taker is soliciting deposits pertaining to URDS, the competent authority shall pass any order in writing, attaching provisionally the deposits held by the deposit taker and the money or other property acquired either in the name of deposit taker or in the name of any other person on behalf of deposit taker from the date of order – Section 7(3). The Ordinance nowhere states that competent authority should give a notice before provisionally attaching the deposits or properties of deposit taker. Hence, competent authority after recording the reasons in writing may proceed with attachment on provisional basis.
- The competent authority shall within a period of 30 days (may extend up to 60 days) for reasons to be recorded in writing, from the date of order of provisional attachment, file an application to the designated court to confirm the attachment and for permission to sell the property so attached by public auction, if necessary, by private sale – Section 14.
- Upon the application filed by the competent authority, the designated court shall issue notice to deposit taker and any person whose property is attached under Section 14 to show cause within a period of 30 days as to why the order of attachment should not be confirmed and properties attached should not be sold – Section 15.
- The designated court shall also issue notice to all other persons represented to it as having or being likely to claim any interest or title in property, to appear on the same day as the deposit taker and other persons whose properties are attached under Section 14 to raise objections, if they so desire, to the attachment of the property. The bankers and other financial institutions who have interest in the properties of the deposit taker can make an appearance and submit their objections to the attachments – Section 15.
- The designated court after adopting the procedures established, shall pass an order confirming the attachment, varying it by releasing a portion of the property from attachment or cancelling the provisional order. Also, the designated court in a situation where confirms attachment either in full or part, pass instructions to sell the attached properties through public or private sale – Section 15.
- The designated court shall pass such order or issue directions as may be necessary for the equitable distribution among the depositors of the money attached or realised from sale of attached properties – Section 15.

- The entire process from confirming the attachment to making payments to depositors should be done in 180 days from the date of receipt of application from competent authority – Section 15.

#### Malafide Transferees:

Where the designated court is satisfied that there is a reasonable cause for believing that the deposit taker has transferred any property otherwise than in good faith and not for commensurate consideration, it shall issue notice to transferee, to appear and to show cause why so much of transferee's property as equivalent to the proper value of property transferred should not be attached. If the transferee does not appear and show cause, the designated court has power to attach the property equivalent (in its opinion) as the proper value of the property.

#### Appeal to High Court:

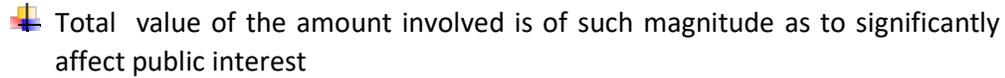
Any person including the competent authority, if aggrieved by the final order of the designated court, may appeal to High Court (in the state in which designated court is situated) within a period of 60 days from the date of order.

#### Power of Supreme Court:

When there is a default in deposit scheme or deposit schemes of nature which are handled by Central Bureau of Investigation, the Supreme Court direct that any particular case be transferred from one designated court to another designated court.

#### Miscellaneous:

- Except offences namely contravention of Section 4 (fraudulent default of RDS) and fails to intimate the concerned authority about accepting deposits as mentioned in Section 10, all other offences, shall be cognizable and non-bailable. That is to say all other offences a Police Officer can book a case on receipt of First Information Report without waiting for Magistrate's Order.
- Immediately on receipt of information by Police Officer, the same should be informed to the Competent Authority.
- On receipt of information from Police Officer or otherwise, the competent authority shall refer the matter to Central Bureau of Investigation, if has reasons to believe that the offences relate to a deposit scheme or schemes in which –
  - ✚ Depositors, deposit takers or properties involved are located in more than one state or UT in India or outside India and



- The provisions of this ordinance shall have effect notwithstanding anything contained in any other law for the time being in force, including any law made by any State or UT.
- The provisions of this ordinance shall be in addition to, and not in derogation of, provisions of any other law for the time being in force.

### Frequently Asked Questions:

#### **FAQ 1: What is this Ordinance about?**

The country has witnessed multiple instances where poor people being defrauded by illicit deposit taking schemes. The victims of these schemes are the poor and financially illiterate and the operation of such schemes are often spread over many states which makes tough to regulate them or take action in the event when such illicit deposit taking scheme is made public.

In order to tackle such illicit deposit taking schemes, the Standing Committee on Finance has recommended that the Government may bring effective administration and enforcement measures, as well as legislative provisions through enactment of one central legislation.

Post such recommendation, the Government constituted an Inter-ministerial Group (IMG), for identifying the gaps in the existing regulatory framework for deposit – taking activities and to suggest administrative measures. Such IMG has formulated a bill which would ban unregulated deposits.

Such Bill has been introduced in Lok Sabha, which referred to Standing Committee to review certain matters. Post such recommendations, the bill has been passed in Lok Sabha. Pending such passing in Rajya Sabha, the President has promulgated an ordinance for immediate action.

Hence, the Ordinance has been enacted to place a ban on unregulated deposit schemes.

#### **FAQ 2: What is unregulated deposit scheme?**

The Ordinance states that any scheme or arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a regulated deposit scheme (RDS) as unregulated deposit scheme (URDS).

#### **FAQ 3: Who is a deposit taker?**

The Ordinance defines deposit taker to mean individual, group of individuals, proprietorship concern, partnership firm, LLP, AOP, trust, co-operative society, multi-state co-operative society or any other arrangement of whatsoever nature **receiving or soliciting deposits**. However, banks and corporations incorporated under an Act of Parliament or State Legislature are excluded from the ambit of deposit taker.

***FAQ 4: What if deposit taker accepts deposits under URDS?***

The Ordinance bans the unregulated deposit schemes from the date of commencement of this ordinance. If any person accepts deposits towards URDS, he shall be punishable as under:

<b>S No</b>	<b>Default – Contravention of Sec 3</b>	<b>Imprisonment</b>	<b>Penalty</b>
1	solicitation of deposits	1 year to 5 years	Rs 2 lakhs to Rs 10 lakhs
2	Accepts deposits	2 years to 7 years	Rs 3 lakhs to Rs 10 lakhs
3	Accepts & Fraudulently defaults in repayment or in rendering of any specified service	3 years to 10 years	Rs 5 lakhs to twice amount of aggregate funds collected

***FAQ 5: I am an individual who is working in a software company. I take a loan from 2-3 friends amounting to Rs 1.5 Crore for construction of my house. I will repay them with appropriate interest after a specific period of time. Am I covered under this Ordinance?***

In our view, you are not covered by ordinance. On a reading of the definition of ‘unregulated deposit scheme’, it is evident that Ordinance intends to cover such people who accept deposits by way of business. In the instant case, since you have taken loan for construction of residential house, you are not covered by Ordinance.

***FAQ 6: I am an individual carrying on business. In order to meet day to day working capital needs, I have borrowed a loan from 3-5 people at different rates of interest amounting to Rs 10 Crores. Am I covered under this Ordinance?***

In our view, you are not covered by ordinance. On a combined reading of the definition of ‘unregulated deposit scheme’ and ‘deposit taker’, it is evident that the Ordinance intends to cover only such people who accepts deposits by way of business. In the instant case, you are not accepting loans by way of business of deposits and hence you are not covered by this Ordinance. Further, the deposit taker should solicit for deposits. In the instant case, there is no solicitation at your end for taking deposits. Hence, we are of the view you are not covered under this Ordinance.

***FAQ 7 : We are a company incorporated under Companies Act, 2013. We collect deposits from various people, and we are registered with SEBI under SEBI (CIS) Regulations. Are we also covered under this Ordinance and thereby cannot accept deposits from the public?***

The Ordinance defines ‘regulated deposit schemes’ as such mentioned in column (3) of First Schedule. If a deposit falls under the First Schedule, then such deposit is a ‘regulated deposit scheme’. Since CIS which is registered with SEBI (CIS) Regulations, is mentioned under the First Schedule, the scheme run by your company will be a ‘regulated deposit scheme’. The list of schemes mentioned under First Schedule are as under:

S No	Regulator	RDS
1	SEBI	<ul style="list-style-type: none"> <li>• Collective Investment Scheme</li> <li>• Alternative Investment Funds</li> <li>• Funds managed by Portfolio Managers</li> <li>• Share Based Employee Benefits</li> <li>• Any other scheme registered under SEBI</li> <li>• Amounts received by Mutual Funds</li> </ul>
2	RBI	<ul style="list-style-type: none"> <li>• Deposits accepted by NBFC</li> <li>• Any other scheme registered/regulated with RBI</li> <li>• Amounts received by BCs and Facilitators</li> <li>• Amounts received by Authorised Payment System</li> </ul>
3	IRDA	<ul style="list-style-type: none"> <li>• Contract of Insurance</li> </ul>
4	State /UT	<ul style="list-style-type: none"> <li>• Scheme by Co-operative Society</li> <li>• Chit Business</li> <li>• Scheme regulated by enactment relating to money lending</li> <li>• Any scheme of prize chit or money circulation</li> </ul>
5	NHB	<ul style="list-style-type: none"> <li>• Scheme for accepting deposits under NHB Act, 1987</li> </ul>
6	PFRDA	<ul style="list-style-type: none"> <li>• Scheme under PFRDA</li> </ul>
7	EPFO	<ul style="list-style-type: none"> <li>• Scheme under EPFMP Act, 1952</li> </ul>
8	Central Registrar	<ul style="list-style-type: none"> <li>• Scheme from accepting deposits from voting members</li> </ul>
9	MCA	<ul style="list-style-type: none"> <li>• Deposits under Chapter V</li> <li>• Nidhi or Mutual Benefit Society under Section 406 of CA, 13</li> </ul>
10	Any Regulatory Body	<ul style="list-style-type: none"> <li>• Deposits accepted under any scheme registered with regulatory body</li> </ul>
11	Central Government	<ul style="list-style-type: none"> <li>• Any other scheme as notified by CG</li> </ul>

**FAQ 8: We are a company registered under Companies Act, 2013. We are accepting deposits from Public in compliance with Chapter V of Companies Act. Post this Ordinance, will my regulator change? Do I need not report to Ministry of Corporate Affairs henceforth?**

There will be no change in regulator. Your company has to report for all purposes of Chapter V to the Ministry of Corporate Affairs post this Ordinance also. This Ordinance brings a central law to regulate deposit taking and not to substitute regulators.

**FAQ 9: We are a company registered under Companies Act, 2013. We run a chit business. The said Chit is registered under Section 2(d) of Chit Funds Act, 1982 with our State Government? We have read in newspapers that Chit is also banned. Is it true?**

Chits which are registered under Chit Funds Act, 1982 are mentioned in First Schedule as 'regulated deposit scheme'. Hence, they are not banned. They continue to be regulated. What is banned is prize chit as defined in Prize Chit and Money Circulations Schemes (Banning) Act, 1978. Hence, chits which are falling under the said act that is Prize Chit and Money Circulation (Banning) Act are prohibited.

***FAQ 10: We are a company operating selling goods under Multilevel marketing techniques. We recruit agents by accepting deposits to sell such goods. Is such deposit taking permitted under Ordinance?***

The Standing Committee on Finance's report on 'Efficacy of Regulation of CIS, Chit Funds etc' states that there is no clear distinction between direct selling agents and multilevel marketing scheme. Hence, many operators under the guise of direct selling agents engage in multilevel marketing schemes. Money collected under multilevel marketing schemes will fall under money circulation which is prohibited under Prize Chit and Money Circulations Schemes (Banning Act), 1978. Hence, money collected under such act vide multilevel marketing gets banned. Since the said activity is not mentioned in the First Schedule, the same would be called as 'unregulated deposit schemes' and accordingly stands banned.

***FAQ 11: We see certain schemes under Prize Chits and Money Circulations Schemes (Banning) Act, 1978 also mentioned under First Schedule as 'regulated deposit schemes'. What kind of schemes are covered?***

Section 11 of Prize Chits and Money Circulations Schemes (Banning) Act, 1978 excludes certain schemes which are promoted by State Government, a company wholly owned by State Government and banking companies. Hence, if a scheme falls under such Section 11, it is a 'regulated deposit scheme' and continues to be legal post this Ordinance.

***FAQ 12: We are a company registered under Companies Act, 2013. We are in the business of collecting deposits. We have examined First Schedule of Ordinance and concluded that our scheme is a 'regulated deposit scheme'. Is there any liability on our company under this Ordinance?***

One of the agendas of this Ordinance is to ban the unregulated deposits. The said Ordinance also states that no deposit taker while accepting deposit pursuant to a RDS, shall commit any fraudulent default in repayment of return of deposit on maturity or in rendering any specified service promised against such deposit. Any violation would lead to punishment of imprisonment which may extend to 7 years or with fine which shall not be less than Rs 5 lakhs but may extend to Rs 25 Crore or 3 times the amount of profits made out of the fraudulent default as referred to in Section 4, whichever is higher.

***FAQ 13: We are a company engaged in promotion of a scheme of deposits which is run by our group company. We do not accept any deposit but run an advertisement campaign for the scheme run by our group company. The scheme run by our group company falls under 'unregulated deposit scheme'. Is there any liability on us for promoting the said scheme?***

Yes, the Ordinance also states that no person shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts to induce another person to invest in, or become a member or participant of any URDS. In case of such act, the Ordinance punishes with imprisonment for a term which shall not be less than one year, but which may extend to five years and with fine which may extend to ten lakh rupees.

***FAQ 14: We are a company registered under Companies Act, 2013. We are contemplating to launch a scheme which falls under First Schedule and hence a 'regulated deposit scheme'. We have registered with concerned Regulatory. Is there any obligation under this Ordinance?***

The Ordinance mandates every deposit taker after commencement of this Ordinance, to intimate an authority which the Central Government designates in specified form and manner the information relating to such scheme. The authority shall host such data in online database which is created for maintaining and operating deposit takers operating in India. All deposits which are defined under Section 2(4) of Ordinance and deposits covered under Chapter V of Companies Act are also required to intimate the authority. Hence, your company even though registered with concerned regulatory, have to intimate to the designated authority under this Ordinance.

***FAQ 15: What is 'deposit' under this Ordinance?***

**'Deposit' means**

**any amount of money received**

- By way of an advance or
- By way of a loan or
- In any Other form

**By a deposit taker with**

- with a promise to return whether after a specified period or otherwise,
- either in cash or kind or in the form of a specified service
- with or without any benefit
- in the form of interest, bonus, profit, or in any other form

**but does not include:**

- amounts received as loan from a schedule bank/co-operative bank/any other bank
- amount received as loan from PFI/NBFCs/RFIs/Insurance Companies
- amounts received from appropriate governments (Govt)
- amount received from any other source where repayment is guaranteed by Govt
- amount received from a statutory authority constituted under any Act
- amount received from foreign govt/foreign or international banks/MFIs/foreign govt owned development financial institutions/foreign export credit collaborators, foreign bodies corporate/foreign citizens/foreign authorities or person resident outside India subject to FEMA regulations
- amount received by way of contributions towards the capital by partners of any partnership firm or LLP
- amount received by an individual by way of loan from his relatives or amounts received by any firm by way of loan from relatives of any of its partners

- amounts received as credit by a buyer from a seller on the sale of any property (whether movable or immovable)
- amount received by ARC
  
- any deposit made under Section 34 or an amount accepted by political party under Section 29B of Representation of People Act, 1951
- any periodic payments made by members of the SHG operating within the ceiling limits as prescribed by State/UT
- any other amounts collected for such purpose and within such ceiling as may be prescribed by State
- amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including –
  - payment, advance or part payment for supply or hire of goods or provisions of services and is repayable in the event the goods or services are not in fact sold, hired or otherwise provided
  - advance received in connection with consideration of immovable property under an agreement or arrangement subject to such condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement
  - security or dealership deposited for the performance of contract for supply of goods or provision of services
  - an advance under the long-term projects for supply of capital goods except immovable property transactions.

Provided that if the amounts received above becomes refundable, such amounts shall be deemed to be deposits on the expiry of 15 days from the date on which they become due for refund

Provided further that where the said amounts become refundable, due to the deposit taker not obtaining necessary permission or approval under the law for time being in force, wherever required, to deal in goods or properties or services for which money is taken, such amounts shall be deemed to be deposits.

***FAQ 16: We are LLP registered under LLP Act, 2008. We are engaged in construction of residential flats. We take loans from the prospective customers and allot them completed flats post construction against such loans. Are we covered under the term 'deposit'?***

The term 'deposit' covers any amount received as loan where return is promised to be in kind or specified service. Since loans are taken by your LLP with a promise to return them completed flats instead of interest, such arrangement or scheme would fall under the term 'deposit'. Since the said scheme or arrangement is not specified under First Schedule of Ordinance, it becomes 'unregulated deposit schemes' and hence banned. Further, the answer would remain the same even if interest is

paid instead of allotting the customers property. The phrase 'deposit' covers amounts taken as loan with or without interest.

**FAQ 17: I have borrowed certain amount from my relative. I agreed to pay him with a specified rate of interest after a period of one year. Will such amount constitute 'deposit'?**

The term 'deposit' specifically excludes amounts received by individual as loan from relatives. The 'relative' has the same meaning as defined in Companies Act, 2013 as stated in the Ordinance. Hence, if your relative falls under the definition of 'relative' under Companies Act, 2013, the loan taken by you will be out of definition of 'deposit'.

**FAQ 18: We are LLP registered under LLP Act, 2008. We have taken loan from relatives of partners. Is such loan covered by 'deposit'?**

The term 'deposit' specifically excludes loans taken by firms from relatives of its partners. However, the expression 'firm' for the purposes of Ordinance has been referred to Partnership Act, 1932. In other words, the 'firm' does not include LLP for the purposes of this Ordinance. Hence, on a strict reading of the Ordinance, loans taken from relatives of partners of LLP is not excluded from the definition of 'deposit'.

However, we opine this might not be the intention of the Ordinance keeping in view the exclusion provided to partnership firms. A clarity in this aspect will make things better.

**FAQ 19: We are LLP registered under LLP Act. We have taken loan from another partnership firm to run business. Is such loan covered under the definition of 'deposit'?**

The phrase 'deposit' under the Ordinance specifically excludes **any amount received in course of, or for the purpose of, business and bearing a genuine connection to business**. Since the amount is taken as loan from partnership firm for purpose of business and has a genuine connection to the business, we are of the view that such loan taken by LLP does not fit under the definition of 'deposit'.

**FAQ 20: We are a subsidiary company. We take loans from time to time from Holding company. On a perusal of definition of 'deposit', we see only loans taken by individuals from relatives or loans taken by firms from relatives of its partners are only excluded. However, we see, loan taken by companies are not covered. In such case, can we said to be accepting 'deposit'?**

The ordinance defines 'deposit' for companies to have the same meaning as assigned in Companies Act, 2013, accordingly amounts taken by one company from another company will not be covered under the definition of 'deposit' under Section 2(1)(c)(vi) of Act, subject to compliance of Section 185 and 186 of Companies Act, 2013 by the lending company and the receiving company.

**FAQ 21: In the above question, assuming my holding company is incorporated outside India and such loan received by me as subsidiary company is in compliance with FEMA regulations, will the answer be any different?**

The phrase 'deposit' under the Ordinance, and the deposit definition under the Companies Act, specifically excludes loans given by foreign bodies corporate or person resident outside India subject

to FEMA regulations. Since holding company is outside India and the loan availed by subsidiary company is in compliance with FEMA regulations, the loan shall be out of 'deposit'.

***FAQ 22: We are a company engaged in provision of services. We have entered an agreement with one of our Client. The terms of the agreement stipulate that 15% of the total value of contract has to be paid in advance for the services to be provided. Will such receipt of 'advance' constitute 'deposit' for the purposes of this Ordinance?***

The phrase 'deposit' specifically excludes advance for the provision of services. Hence, receipt of advances will not be a 'deposit'.

***FAQ 23: Continuing with the above question, what if the terms of agreement states that the 15% amount is non-refundable deposit? Will the answer change?***

The exclusion of advance from the phrase 'deposit' arises only when such advance is coupled with a condition that it is repayable in absence where services are not provided. Since the contract entered states that the advance is non-refundable, the said advance would fall under the definition of 'deposit'.

However, we are of the view that such advance still falls under the ambit of ***any amount received in course of, or for the purpose of, business and bearing a genuine connection to business*** and accordingly stands out of deposit.

Further, there is no offence per se in taking deposit. The offence comes into play only when it is taken by a deposit taker who should solicit for such deposit. Hence, we are of the view that since your company does not fit into the definition of 'deposit taker', such non-refundable amount does not constitute 'deposit'. However, it is better to enter contracts with refundable options till there is enough clarity from the Central Government on this end.

***FAQ 24: I have contributed to an unregulated deposit scheme after the ordinance has come into effect. Later, the competent authority has booked a case against the deposit taker. How is my money restored?***

Once the competent authority has reasons to believe that a deposit taker is engaged in accepting deposits towards unregulated deposit schemes, such competent authority will pass an appropriate order attaching the properties of deposit taker. After due process of law, the money will be realised and given back to the depositor. The attachments under this ordinance will override the attachments that were passed under the SARFESI Act and Insolvency and Bankruptcy Code. Apart from the attachments, the amounts payable to the depositors will have overriding effect on other debts and all revenues, taxes and other cesses payable to the government.

**The above is contributed by CA Suresh Babu S & CA Sri Harsha. For any further queries or discussion on the above, please reach [suresh@sbsandco.com](mailto:suresh@sbsandco.com), [harsha@sbsandco.com](mailto:harsha@sbsandco.com) or [ssg@sbsandco.com](mailto:ssg@sbsandco.com)**